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Hawaiian Gazette Supplement, Jan. 17, 1883.

Supreme Court of the Hawaiian Islands
In Bank.

His Majesty Kalakaua and His Majesty
Kapuianehine vs. G. W. Koenigsmuller et al.
In Equity, Before Judge C. A. McCully and
Attala J. A.

Opinion of the Court by Justice.

The question in this case comes before

the full Court by consent, on a demurrer

to the bill of complaint.

The bill alleges in substance that the defendants, except D. K. Fyfe, are the heirs at law of William L. Macdonald, late of Honolulu deceased, that in the year 1848 or thereabouts the said Macdonald married one Koenigsmuller who died intestate without issue in 1859; that letters of administration were issued upon the estate to said W. L. Macdonald on the 25th day of March 1859. That said Macdonald died in September 1878, never having filed any accounts or such administration and never having been discharged from said trust.

That said Koenigsmuller was owned and possessed in her lifetime of the trusts of land in the bill described by virtue of the

deeds between his late Majesty Kalakaua III and the church. In the year 1848

that said Koenigsmuller, in her life time, filed her petition before the Land Commission praying that her title to said lands be confirmed by an award; that after her death as award was issued upon her said petition being No. 4308, a copy of which is filed and made part of the bill of complaint;

that three Royal Letters have been issued upon portions of said properties which are described in Nos. 4308, 4309, 4310 being the same numbered 1859, 1860 and 1868, copies of which are filed and made part of the said bill of complaint; that the words "the W. L. Macdonald" were fraudulently and erroneously inserted in the name of said Koenigsmuller in certain portions of said award referring to said lands described in the said bill, but not in other parts of said award.

And the plaintiffs allege that the plaintiff Her Majesty Kalakaua is the grantee and now holds all the title of Koenigsmuller and Kinoea, as well as the lands described in said bill, and at the time of said grant the grantor was the sole surviving heir of her late husband.

That the defendants, except D. K. Fyfe, falsely contend that they are entitled, under and award, to possession of said lands which they hold and retain as heirs of said W. L. Macdonald deceased. Whereas the plaintiffs charge that said W. L. Macdonald was not a party in interest before said land commission and offered no evidence before them in support of any claim of title on his part, and that the words "the W. L. Macdonald" when they occur in said award were fraudulently and erroneously inserted, without right, and contrary to fact.

And the plaintiffs call

relied in accordance with their allegations.

The defendants denied and aver in substance that the bill entitles the plaintiffs to no relief; that they cannot recover because of lack of proof of diligence in presenting their claim, and that the statute of limitations has run upon the plaintiffs' claim.

The award which concerns the land described in the bill bears date Sept. 17th 1859. Koenigsmuller died in the year 1849.

Under the statute of 1846 p. 88 Sec. 3 Macdonald, at the time of her death, had possession of all her lands as her husband. When appointed administrator of the estate of his wife Koenigsmuller on the 13th of March 1859, there was no award in his favor for the lands in the complaint described, bearing date Sept. 17th 1859. This was equivalent to a judgment in his favor.

See Bishop vs. Koenigsmuller and Kinoea

Kinoea 2nd Haw. R. p. 288-9-40.

Kekela vs. Dennis et al. Haw. R. p. 41

Kekela vs. Gill 1st Haw. R. p. 50.

See Kinoea vs. Perry 2nd Haw. R. p. 182.

Kalakaua vs. Kinoea Oct. Term 1882.

The plaintiff contends however, argues that there was not an adjudication in favor of Macdonald at all because he was not a claimant before the Land Commission, and no evidence was offered in his favor. The bill alleges that Koenigsmuller died in a position in her life time praying that her title to said lands be confirmed by an award. That after her death said award 4308 was issued in her sole petition. It is not stated that any new proof was taken after her death, and yet the situation of the property was changed. We are not to suppose after the lapse of time that the Land Commission and authority for issuing the award they actually did issue. It was undoubtedly in favor of Macdonald. The failure to record evidence in certain it does not vindicate although if the question were opened it would be possible argued in Macdonald's behalf if how he might be able to explain it.

The plaintiff claims that by the appointment of Macdonald as administrator of his wife's estate he became trustee of her lands for her heirs, and never relinquished the trust and that therefore, his possession up to the time of his death was not adverse to her heirs the plaintiff's grantor. This was so in his hands left by her. It is plain we think that by taking administration he did not intend to acknowledge any land as belonging to his wife's heirs which was then awarded to himself.

A possession to be adverse must be under a claim of title against all the world. See Kinoea et al vs. Oahu and Honolulu, 2d Hawaiian Reports, pp. 58-74. Opinion of Judge J.

We think the award and Macdonald's possession under it constituted an adverse possession as against the heirs of Koenigsmuller. The bill shows Macdonald's power soon to have originated from the death of his wife to his own death, more than thirty years after. Possession adversely commenced is presumed to continue adversely so long as maintained. Bogard vs. Trinity Church, 4 Sand Ct. R. 881, 73, 2 Greenleaf's Ed., Vol. 41.

The plaintiff claims that after Macdonald became administrator his possession became adverse.

Upon the point Perry vs. Tracy, vol. 2 Sec. 86, says "It is a simple regulation of the law to clear and dispossess acts of wrong, and claims the estate as his own, and such reparation and claim are brought home to the notice or knowledge of the

plaintiff from the statute runs. See also Washburn vs. Good Property, vol. 2, p. 408.

We think the case of Perry is stronger than this. Macdonald, as we have said appears by the bill to have never admitted a trust in the lands in the complaint described. The award constituted an open and evident repudiation of any trust. We think it is notice to the plaintiff's grantor, and to those under whom she claimed, that he claimed the possession as owner.

The plaintiff further claims that Macdonald's possession was never adverse because of fraud and error in the award so charged.

We think this is not so. We believe the law to be well settled that the greater chance that the title claimed was valid, or considered as valid, the less does the defendant from the facts of adverse possession impeach under it.

See Harpenden vs. The Reformed Pres. Church, 31 Peters 41, 45, Bogard vs. Trinity Church, 4 Sand Ct. R. 881, 73, 2 Greenleaf's Ed., Vol. 41.

The plaintiff further claims that the statute of Limitations cannot be taken advantage of as defensive. We will think the plaintiff's rights in this law.

One in the Equity pleading says that the statute of Limitations may be taken advantage of as defensive in equity as in law, when it appears on the face of the bill. See 50, Note 1, Section 184 and 251. He further says "The policy of the law is to give quiet and peace to citizens. After great lapse of time and long peaceful possession equity courts ought not to interfere."

11, 422 See also Story, Eq. Jur. Sec. 1829.

We think all the facts requisite to establish thirty years adverse possession in Macdonald and his heirs appear on the face of the bill.

The plaintiff's counsel says with some degree of difficulty, Koenigsmuller and another had Haw. R. p. 288, an authority allowing this bill to correct the award. In that case the award was issued February 18th 1859 and the legal action on it was filed May 18th 1860. And the bill was pleaded March 18th 1869 only nine years after the award.

The court say they will not allow so long a lapse of adverse possession prior to the award and that it is not pretended that any more than.

See Kinoea vs. Long 2nd Haw. R. 222. The language quoted indicates that if the proofs had been as here the defense would have prevailed.

But the plaintiff's counsel says that since fraud is alleged, as in this case, the statute does not begin to run until the discovery of the fraud, and that the bill does not allege the time of the discovery, so the full time of the statute may not have run. In many countries the Statute of Limitations is enlarged in case of fraud. In England the statute begins to run as soon as concealed fraud from the time when with reasonable diligence the fraud might have been discovered.

Story's Equity Jurisprudence, Sec. 221 A. n. 2. In our statute of Limitations there is enough enlargement of the time. The limitation is twenty years. Non-delivery of Koenigsmuller's heirs is alleged in the Bill and therefore time is presumed to exist.

It is said they were friends, and that the family relationship of the parties and the unwillingness to have a contention with the landlord Macdonald who was a poor man, and Hawaiian custom caused him to consent to accept an explanation of the debt by being sold. This argument assumes knowledge of the fraud. If any, and would be properly provable in estimation of debt, of the statute had not run, but not now.

We think as we have said that the heirs of Macdonald must be presumed from the facts alleged in the bill to have had knowledge of the nature of the award from the time it was made.

He acquired possession of the lands after the death of his wife, was aware of the nature of his rights, and possession was never questioned in his life time, and could not be so questioned now. See Perry vs. Brooks, Sec. 228, vol. 1.

The Statute of Limitations fully ran long ago. We have examined all the authorities cited by the plaintiff's counsel and under the law of this Kingdom, we think the plaintiff's action cannot be maintained.

The defendant is presumed, with leave, however, to the plaintiff to amend the bill to withdraw from the date of this decision, and if they do so amend, then let judgment absolve for the defendant, as entered with costs.

Hon. F. Proctor and Mr. Hatch for plaintiff; J. M. Dabbs for defendants. Honolulu, January 12th, 1883.

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